

Lauren A. Dean, Esq. (SBN 174722)
lauren@magdeanlaw.com
MAGNANIMO DEAN LAW, APC
5850 Canoga Ave., Suite 400
Woodland Hills, California 91367
Telephone: (818) 305-3450
Facsimile: (818) 305-3451

Attorney for Plaintiff:
Michael Vallieres

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MICHAEL VALLIERES, Derivatively
on Behalf of AFFIRM HOLDINGS,
INC.,

Plaintiff,

v.

MAX LEVCHIN, JEREMY LIEW,
LIBOR MICHALEK, JENNY J.
MING, CHRISTA S. QUARLES,
KEITH RABOIS, JACQUELINE D.
RESES, JAMES D. WHITE AND
MICHAEL LINFORD,

Defendants,

-and-

AFFIRM HOLDINGS, INC.,

Nominal Defendant.

CASE NO.:

**VERIFIED SHAREHOLDER
DERIVATIVE COMPLAINT**

Plaintiff Michael Vallieres, by and through his undersigned counsel, derivatively on behalf of Nominal Defendant Affirm Holdings, Inc. (“Affirm” or the “Company”), submit this Verified Shareholder Derivative Complaint (the “Complaint”). Plaintiff’s allegations are based upon his personal knowledge as to himself and his own acts, and

1 upon information and belief, developed from the investigation and analysis by Plaintiff's
2 counsel, including a review of publicly available information, including filings by
3 Affirm with the U.S. Securities and Exchange Commission ("SEC"), press releases,
4 news reports, analyst reports, investor conference transcripts, publicly available filings
5 in lawsuits, and matters of public record.

6 **NATURE OF THE ACTION**

7 1. This is a shareholder derivative action brought in the right, and for the
8 benefit, of Affirm.

9 2. The Company operates a platform for digital and mobile-first commerce in
10 the U.S. and Canada. The Company's platform includes point-of-sale payment solutions
11 for consumers, merchant commerce solutions, and a consumer-focused app. The
12 Company offers a payment service known as "buy now, pay-later" ("BNPL"), which
13 allows consumers to purchase a product immediately and pay for it at a later time,
14 usually over a series of installments. According to the Company: "[u]nlike legacy
15 payment options and our competitors' product offerings, which charge deferred or
16 compounding interest and unexpected costs, we disclose up-front to consumers exactly
17 what they will owe — no hidden fees, no penalties."

18 3. The Company also maintains an official Twitter account, through which it
19 publishes statements—or "tweets"—including periodic financial results.

20 4. Throughout the Relevant Period, Defendants caused the Company to make
21 materially false and misleading statements concerning the Company's business,
22 operations, and compliance policies. Defendants caused the Company to make false
23 and/or misleading statements and/or failed to disclose that: (i) the Company's BNPL
24 service facilitated excessive consumer debt, regulatory arbitrage, and data harvesting;
25 (ii) the foregoing subjected the Company to a heightened risk of regulatory scrutiny and
26 enforcement action; (iii) the Company maintained inadequate disclosure controls and
27 procedures and internal control over financial reporting; (iv) accordingly, the
28 Company's tweet for its second quarter 2022 financial results contained selected metrics

1 that made it appear that the Company had performed better than it actually did; and (v)
2 as a result, the Company's public statements were materially false and misleading at all
3 relevant times.

4 5. On December 16, 2021, the Consumer Financial Protection Bureau (the
5 "CFPB") reported that it had launched an inquiry into the Company's BNPL payment
6 service, along with four other companies offering BNPL. The CFPB indicated that it
7 was concerned about how BNPL leads to "accumulating debt, regulatory arbitrage, and
8 data harvesting," and is seeking data on the risks and benefits of the products. In a
9 statement addressing BNPL services, the CFPB Director stated, "[t]he consumer gets the
10 product immediately but gets the debt immediately too."

11 6. On this news, the Company's stock price fell \$11.74 per share, or 10.58%,
12 to close at \$99.24 per share on December 16, 2021.

13 7. Then, at approximately 1:15 p.m. on February 10, 2022, the Company
14 issued a tweet from its official Twitter account, wherein the Company disclosed certain
15 metrics from its second quarter 2022 financial results. The tweet, which was published
16 prior to the Company's planned release of its financial results, portrayed a highly
17 successful quarter, which included an increase in revenue of 77%. This caused the
18 Company's share price to spike nearly 10% in intra-day trading. The Company later
19 deleted the tweet and released its full second quarter financial results ahead of schedule,
20 which were lackluster, posting a loss of \$0.57 per share, compared with analyst
21 expectations of \$0.37 per share.

22 8. On this news, the Company's share price plummeted from an intra-day high
23 of \$83.57 per share on February 10, 2022, to close at \$58.68 per share, or approximately
24 32%.

25 **JURISDICTION**

26 9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331
27 because Plaintiff's claims raise a federal question under Section 10(b) of the Exchange
28 Act (15 U.S.C. § 78j(b)) and Section 21D of the Exchange Act (15 U.S.C. § 78u-4(f)).

Plaintiff's claims also raise a federal question pertaining to the claims made in the securities class actions entitled *Toole v. Affirm Holdings, Inc., et al.*, Case 3:22-cv-01243 (N.D. Cal.) (the "Securities Class Action") based on violations of the Exchange Act.

10. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a).

11. This derivative action is not a collusive action to confer jurisdiction on a court of the United States that it would not otherwise have.

12. Venue is proper in this District because the alleged misstatements and wrongs complained of herein entered this District, Defendants have conducted business in this District, and Defendants' actions have had an effect in this District. In addition, the Company's principal executive offices are in this District.

THE PARTIES

Plaintiff

13. Plaintiff is, and was at relevant times, a shareholder of Affirm. Plaintiff will fairly and adequately represent the interests of the shareholders in enforcing the rights of the corporation. Plaintiff currently holds Affirm shares as of the filing of this Complaint.

Nominal Defendant

14. *Nominal Defendant* Affirm is a Delaware corporation with principal executive offices located at 650 California Street, San Francisco, California 94108.

Defendant Directors

15. *Defendant Max Levchin* ("Levchin") has served as the Company's Chairman of the Board of Directors (the "Board") and Chief Executive Officer ("CEO") at all relevant times. Defendant Levchin is also the founder of the Company.

16. *Defendant Jeremy Liew* ("Liew") has served as a member of the Company's Board since 2013. Defendant Liew has been a Partner at Lightspeed Venture Partners, a venture capital firm, since 2006. Defendant Liew is the Chair of the Compensation Committee and a member of the Nominating and Governance

Committee.

17. ***Defendant Libor Michalek*** (“Michalek”) has served as a member of the Company’s Board since May 2021. Defendant Michalek has served as the Company’s President, Technology, Risk and Operations since May 2021 and previously served as the Company’s President, Technology from 2018 to May 2021. Defendant Michalek served as the Company’s Chief Technology Officer from 2015 to 2018. Prior to joining the Company, Defendant Michalek served as an Engineering Director at YouTube and Google.

18. ***Defendant Jenny J. Ming*** (“Ming”) has served as a member of the Company’s Board since February 2021. Defendant Ming is a member of the Audit Committee and a member of the Nominating and Governance Committee.

19. ***Defendant Christa S. Quarles*** (“Quarles”) has served as a member of the Company’s Board since 2018. Defendant Quarles is the Chair of the Audit Committee and a member of the Compensation Committee.

20. ***Defendant Keith Rabois*** (“Rabois”) has served as a member of the Company’s Board since 2013. Defendant Rabois has been a General Partner at Founders Fund since 2019. Prior to joining Founders Fund, Defendant Rabois served as a Managing Director at Khosla Ventures from 2013 to 2019. Defendant Rabois is a member of the Audit Committee.

21. ***Defendant Jacqueline D. Reses*** (“Reses”) has served as a member of the Company’s Board since January 2021. Defendant Reses is a member of the Audit Committee and the Compensation Committee.

22. ***Defendant James D. White*** (“White”) has served as a member of the Company’s Board since February 2021.

23. Defendants Levchin, Liew, Michalek, Ming, Quarles, Rabois, Reses and White are collectively referred to hereinafter as the “Director Defendants.”

Officer Defendant

24. ***Defendant Michael Linford*** (“Linford”) has served as the Company’s

Chief Financial Officer at all relevant times.

25. The Director Defendants and Defendant Linford are collectively referred to herein as the “Individual Defendants”.

CODE OF BUSINESS CONDUCT AND ETHICS

26. As members of the Board, the Director Defendants were held to the highest standards of honesty and integrity and charged with overseeing the Company’s business practices and policies and assuring the integrity of its financial and business records.

27. The conduct of the Director Defendants complained of herein involves a knowing and culpable violation of their obligations as directors and officers of the Company, the absence of good faith on their part, and a reckless disregard for their duties to the Company and its investors that the Director Defendants were aware posed a risk of serious injury to the Company.

DUTIES OF THE INDIVIDUAL DEFENDANTS

28. By reason of their positions as officers and/or directors of the Company, and because of their ability to control the business and corporate affairs of the Company, the Individual Defendants owed Affirm and its investors the fiduciary obligations of trust, loyalty, and good faith. The obligations required the Individual Defendants to use their utmost abilities to control and manage the Company in an honest and lawful manner. The Individual Defendants were and are required to act in furtherance of the best interests of the Company and its investors.

29. The Individual Defendants owe to Affirm and its investors the fiduciary duty to exercise loyalty, good faith, and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets. In addition, as officers and/or directors of a publicly held company, the Individual Defendants had a duty to promptly disseminate accurate and truthful information with regard to the Company’s operations, finances, and financial condition, as well as present and future business prospects, so that the market price of the Company’s stock would be based on truthful and accurate information.

1 30. To discharge their duties, the officers and directors of Affirm were required
2 to exercise reasonable and prudent supervision over the management, policies, practices,
3 and controls of the affairs of the Company. By virtue of such duties, the officers and
4 directors of Affirm were required to, among other things:

5 (a) ensure that the Company complied with its legal obligations and
6 requirements, including acting only within the scope of its legal authority and
7 disseminating truthful and accurate statements to the SEC and the investing
8 public;

9 (b) conduct the affairs of the Company in an efficient, businesslike
10 manner so as to make it possible to provide the highest quality performance of its
11 business, to avoid wasting the Company's assets, and to maximize the value of
12 the Company's stock;

13 (c) properly and accurately guide investors and analysts as to the true
14 financial condition of the Company at any given time, including making accurate
15 statements about the Company's business prospects, and ensuring that the
16 Company maintained an adequate system of financial controls such that the
17 Company's financial reporting would be true and accurate at all times;

18 (d) remain informed as to how Affirm conducted its operations, and,
19 upon receipt of notice or information of imprudent or unsound conditions or
20 practices, make reasonable inquiries in connection therewith, take steps to correct
21 such conditions or practices, and make such disclosures as necessary to comply
22 with federal and state securities laws;

23 (e) ensure that the Company was operated in a diligent, honest, and
24 prudent manner in compliance with all applicable federal, state and local laws,
25 and rules and regulations; and

26 (f) ensure that all decisions were the product of independent business
27 judgment and not the result of outside influences or entrenchment motives.
28

31. Each Individual Defendant, by virtue of his position as a director and/or officer, owed to the Company and to its shareholders the fiduciary duties of loyalty, good faith, and the exercise of due care and diligence in the management and administration of the affairs of the Company, as well as in the use and preservation of its property and assets. The conduct of the Individual Defendants complained of herein involves a knowing and culpable violation of their obligations as directors and officers of Affirm, the absence of good faith on their part, and a reckless disregard for their duties to the Company and its shareholders that the Individual Defendants were aware, or should have been aware, posed a risk of serious injury to the Company.

32. The Individual Defendants breached their duties of loyalty and good faith by causing the Company to issue false and misleading statements concerning the financial condition of the Company. As a result, Affirm has expended, and will continue to expend, significant sums of money related to investigations and lawsuits.

THE COMPANY'S AUDIT COMMITTEE CHARTER

33. Pursuant to the Company's Audit Committee Charter: "The purpose of the Audit Committee (the 'Committee') of the Board of Directors (the 'Board') of Affirm Holdings, Inc. (the 'Corporation') is to prepare the audit committee report required by the SEC to be included in the Corporation's annual proxy statement and to assist the Board in overseeing and monitoring: (i) the Corporation's accounting and financial reporting processes; (ii) the quality and integrity of the Corporation's financial statements and the auditing of those financial statements; (iii) compliance with legal and regulatory requirements; (iv) the Corporation's independent registered public accounting firm's qualifications and independence; (v) the performance of the Corporation's internal audit function; and (vi) the appointment, compensation, retention, oversight and performance of the Corporation's independent registered public accounting firm. The Committee shall also perform such further functions as may be consistent with this Charter or assigned by applicable law, the Corporation's certificate of incorporation or bylaws, or the Board."

34. The following duties and responsibilities are within the authority of the Audit Committee, and the Audit Committee shall perform such duties consistent with and subject to applicable law and rules and regulations promulgated by the SEC, Nasdaq, or any other applicable regulatory authority:

B. Oversight of Annual Audit and Quarterly Reviews

The Committee shall have the following duties and responsibilities with respect to the Corporation's annual audit and quarterly reviews:

- (a) Review and discuss with the Independent Auditor its annual audit plan, including the timing and scope of audit activities, and monitor such plan's progress and results during the year;
- (b) Review with management, the Independent Auditor and the leader of the Corporation's internal audit function, the following:
 - (i) all critical accounting policies and practices to be used;
 - (ii) any critical audit matters arising from the current period audit;
 - (iii) all alternative treatments of financial information that the Independent Auditor has discussed with management, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the Independent Auditor;
 - (iv) all other material written communications between the Independent Auditor and management, such as any management letter and any schedule of unadjusted differences; and
 - (v) any material financial arrangements of the Corporation which do not appear on the financial statements of the Corporation; and
- (c) Resolve all disagreements between the Independent Auditor and management regarding financial reporting.

C. Oversight of the Financial Reporting Process and Internal

Controls

The Committee shall have the following duties and responsibilities with respect to the Corporation's financial reporting process and internal controls:

(a) Review:

- (i) the adequacy and effectiveness of the Corporation's accounting and internal control policies and procedures on a regular basis, including the responsibilities, budget, compensation and staffing of the Corporation's internal audit function, through inquiry and discussions with the Independent Auditor, management and the leader of the Corporation's internal audit function; and
- (ii) if applicable, the yearly report prepared by management, and attested to by the Independent Auditor, assessing the effectiveness of the Corporation's internal control over financial reporting and stating management's responsibility for establishing and maintaining adequate internal control over financial reporting prior to its inclusion in the Corporation's Annual Report on Form 10-K;

(b) Review periodically with the Chief Executive Officer, Chief Financial Officer and the Independent Auditor:

- (i) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Corporation's ability to record, process, summarize and report financial information; and
- (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Corporation's internal control over financial reporting;

(c) Discuss guidelines and policies governing the process by which senior management of the Corporation and the relevant departments of the Corporation, including the internal audit function, assess and manage the Corporation's exposure to risk, as well as the Corporation's major litigation and financial risk exposures and the

steps management has taken to monitor and control such exposures it being understood that it is the job of management to assess and manage the Corporation's exposure to risk and that the Committee's responsibility is to discuss guidelines and policies by which risk assessment is undertaken;

- (d) Provide input to management regarding the selection, review and removal of the leader of the Corporation's internal audit function;
- (e) Review with management the progress and results of all internal audit projects, and, when deemed necessary or appropriate by the Committee, assign additional internal audit projects to the leader of the Corporation's internal audit function;
- (f) Review and discuss with the Independent Auditor the results of the year-end audit of the Corporation, including any comments or recommendations of the Independent Auditor, and, based on such review and discussions and on such other considerations as it determines appropriate, recommend to the Board whether the Corporation's financial statements should be included in the Annual Report on Form 10-K; and
- (g) Review the type and presentation of information to be included in the Corporation's earnings press releases (especially the use of "pro forma" or "adjusted" information not prepared in compliance with generally accepted accounting principles), as well as financial information and earnings guidance provided by the Corporation to analysts and rating agencies (which review may be done generally (*e.g.*, discussion of the types of information to be disclosed and type of presentations to be made), and the Committee need not discuss in advance each earnings release or each instance in which the Corporation may provide earnings guidance).

D. Miscellaneous

The Committee shall have the following additional duties and responsibilities:

- (a) Meet periodically with the Chief Legal Officer, and outside counsel when appropriate, to review legal and regulatory matters, including

- (i) any matters that may have a material impact on the financial statements of the Corporation and (ii) any matters involving potential or ongoing material violations of law or breaches of fiduciary duty by the Corporation or any of its directors, officers, employees or agents or breaches of fiduciary duty to the Corporation;
- (b) Review and approve or ratify, as appropriate, any transaction between the Corporation and any related person (as defined in Item 404 of Regulation S-K of the SEC) in accordance with the Corporation's Related Person Transactions Policy;
- (c) Prepare the audit committee report required by Item 407(d) of Regulation S-K to be included in the Corporation's annual proxy statement;
- (d) Review and approve in advance any services provided by the Independent Auditor to the Corporation's executive officers or members of their immediate family;
- (e) Review the Corporation's program to monitor compliance with the Corporation's Code of Conduct and Ethics (the "Code of Conduct"), and meet periodically with the Corporation's Chief Legal Officer to discuss compliance with the Code of Conduct [...].

SUBSTANTIVE ALLEGATIONS

Background

35. The Company operates a platform for digital and mobile-first commerce in the U.S. and Canada. The Company's platform includes point-of-sale payment solutions for consumers, merchant commerce solutions, and a consumer-focused app. The Company offers a BNPL payment service, which allows consumers to purchase a product immediately and pay for it at a later time, usually over a series of installments. According to the Company, "[u]nlike legacy payment options and our competitors' product offerings, which charge deferred or compounding interest and unexpected costs, we disclose up-front to consumers exactly what they will owe — no hidden fees, no

1 penalties.”

2 36. The Company also maintains an official Twitter account, through which it
3 publishes statements—or “tweets”—including periodic financial results.

4 **FALSE AND MISLEADING STATEMENTS**

5 37. On February 12, 2021, Defendants caused the Company to issue a post-
6 market press release reporting the Company’s fiscal year 2021 second quarter results.
7 That press release quoted Defendant Levchin, who stated that the Company’s “mission
8 has been to build honest financial products that improve lives”; that “[w]e’ve aligned our
9 success with the success of both sides of the commerce ecosystem, winning when our
10 consumers . . . win”; and that “we remain committed to empowering consumers to take
11 control of their finances[.]”

12 38. On February 17, 2021, Defendants caused the Company to file a quarterly
13 report on Form 10-Q with the SEC, reporting the Company’s financial and operating
14 results for the quarter ended December 31, 2020 (the “2Q21 Form 10-Q”):

15 Affirm . . . provides consumers with a simpler, more transparent, and
16 flexible alternative to traditional payment options. Our mission is to
17 deliver honest financial products that improve lives Affirm enables
18 consumers to confidently pay for a purchase over time

19 Consumers get the flexibility to buy now and make simple monthly
20 payments for their purchases and merchants see . . . an overall more
21 satisfied customer base. Unlike legacy payment options and our
22 competitors’ product offerings, which charge deferred or compounding
23 interest and unexpected costs, we disclose up-front to consumers exactly
24 what they will owe — no hidden fees, no penalties.

25 39. The 2Q21 Form 10-Q also stated that the Company “ha[d] developed
26 policies and procedures designed to assist in compliance with [various federal and state
27 consumer protection] laws and regulations[.]”

28 40. Appended as exhibits to the 2Q21 Form 10-Q were signed certifications
pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”), wherein Defendants Levchin and
Lindford certified that the 2Q21 Form 10-Q “fully complies with the requirements of

1 Section 13(a) or 15(d) of the [Exchange Act] and that information contained in the
 2 [2Q21 10-Q] fairly presents, in all material respects, the financial condition and results
 3 of operations of the issuer.”

4 41. On May 10, 2021, Defendants caused the Company to issue a press release
 5 reporting the Company’s fiscal year 2021 third quarter results. That press release quoted
 6 Defendant Levchin, who represented that “Affirm’s strong third quarter results reflect
 7 continued progress toward building the most . . . transparent financial network for
 8 consumers and merchants[.]”

9 42. On May 17, 2021, Defendants caused the Company to file a quarterly report
 10 on Form 10-Q with the SEC, reporting the Company’s financial and operating results for
 11 the quarter ended March 31, 2021 (the “3Q21 Form 10-Q”). That filing contained
 12 substantively the same statements as referenced in ¶¶ 37-39, regarding the Company’s
 13 purportedly transparent, simple, and trustworthy payment solutions for consumers, and
 14 policies and procedures designed to assist in compliance with various federal and state
 15 consumer protection laws and regulations.

16 43. Appended as exhibits to the 3Q21 Form 10-Q were substantively the same
 17 SOX certifications as referenced in ¶ 40, signed by Defendants Levchin and Lindford.

18 44. On September 9, 2021, Defendants caused the Company to issue a press
 19 release reporting its fourth quarter and fiscal year 2021 results. That press release
 20 quoted Defendant Levchin:

21 The secular shift toward flexible and transparent financial products
 22 continues to accelerate.

23 With our superior technology, Affirm is strongly positioned to build a more
 24 valuable two sided network for consumers and merchants. We remain
 25 focused on extending our leadership position with our core products, while
 26 capitalizing on our vast opportunities to empower more people with the
 new ones we continue to launch.

27 45. On September 17, 2021, Defendants caused the Company to file an annual
 28 report on Form 10-K with the SEC, reporting the Company’s financial and operating

1 results for the quarter and fiscal year ended June 30, 2021 (the “2021 Form 10-K”).
2 That filing contained substantively the same statements as referenced in ¶¶ 37-39,
3 regarding the Company’s purportedly transparent, simple, and trustworthy payment
4 solutions for consumers, and policies and procedures designed to assist in compliance
5 with various federal and state consumer protection laws and regulations.

6 46. The 2021 Form 10-K also assured investors that the Company had
7 “concluded that our disclosure controls and procedures were effective as of June 30,
8 2021” and that “[t]here have not been any changes in the Company’s internal control
9 over financial reporting . . . during the fourth quarter of fiscal 2021 that have materially
10 affected, or are reasonably likely to materially affect, the Company’s internal control
11 over financial reporting, except” for certain changes that the Company had made to
12 resolve a prior, purportedly remediated, material weakness in its internal controls.

13 47. Appended as exhibits to the 2021 Form 10-K were substantively the same
14 SOX certifications as referenced in ¶ 40, signed by Defendants Levchin and Lindford.

15 48. On November 10, 2021, Defendants caused the Company to issue a press
16 release reporting the Company’s fiscal year 2022 first quarter results. That press release
17 quoted Defendant Levchin: “[o]ur strong quarter once again demonstrates the continued
18 momentum across Affirm as more people embrace the transparency, flexibility and
19 value our solutions provide[.]”

20 49. The same November 10, 2021 press release also highlighted an expanded
21 relationship with Amazon: “[c]onsumers will have the option to split the total cost of
22 eligible purchases into monthly payments at checkout with no late or hidden fees,
23 ever[.]” and that, “[a]s part of an amended agreement, Affirm will serve as Amazon’s
24 only third party, non credit card, [BNPL] option in the U.S.”

25
26 50. On November 15, 2021, Defendants caused the Company to file a quarterly
27 report on Form 10-Q with the SEC, reporting the Company’s financial and operating
28 results for the quarter ended September 30, 2021 (the “1Q22 Form 10-Q”). That filing

1 contained substantively the same statements as referenced in ¶¶ 37-39, regarding the
 2 Company's purportedly transparent, simple, and trustworthy payment solutions for
 3 consumers, and effective disclosure controls and procedures and internal control over
 4 financial reporting.

5 51. Appended as exhibits to the 1Q22 Form 10-Q were substantively the same
 6 SOX certifications as referenced in ¶ 40, signed by Defendants Levchin and Lindford.

7 52. The statements referenced in ¶¶ 37-51 were false and misleading because
 8 Defendants made false and/or misleading statements, as well as failed to disclose
 9 material adverse facts about the Company's business, operations, and compliance
 10 policies. Defendants made false and/or misleading statements and/or failed to disclose
 11 that: (i) the Company's BNPL service facilitated excessive consumer debt, regulatory
 12 arbitrage, and data harvesting; (ii) the foregoing subjected the Company to a heightened
 13 risk of regulatory scrutiny and enforcement action; (iii) the Company maintained
 14 inadequate disclosure controls and procedures and internal control over financial
 15 reporting; (iv) accordingly, the Company's tweet for its second quarter 2022 financial
 16 results contained selected metrics that made it appear that the Company had performed
 17 better than it actually did; and (v) as a result, the Company's public statements were
 18 materially false and misleading at all relevant times.

19 **THE TRUTH BEGINS TO EMERGE**

20 53. On December 16, 2021, the CFPB announced that it had launched an
 21 inquiry into the Company's BNPL payment service, along with four other companies
 22 offering BNPL. The CFPB stated:

23 Today the [CFPB] issued a series of orders to five companies offering "buy
 24 now, pay later" (BNPL) credit. The orders to collect information on the
 25 risks and benefits of these fast-growing loans went to [*inter alia*] Affirm . .
 26 . . The CFPB is concerned about accumulating debt, regulatory arbitrage,
 27 and data harvesting in a consumer credit market already quickly changing
 28 with technology.

"Buy now, pay later is the new version of the old layaway plan, but with

1 modern, faster twists where the consumer gets the product immediately but
 2 gets the debt immediately too,” said CFPB Director Rohit Chopra. “We
 3 have ordered [*inter alia*] Affirm . . . to submit information so that we can
 4 report to the public about industry practices and risks.” Buy now, pay later
 5 credit is a type of deferred payment option that generally allows the
 6 consumer to split a purchase into smaller installments, typically four or
 7 less, often with a down payment of 25 percent due at checkout. The
 8 application process is quick, involving relatively little information from the
 9 consumer, and the product often comes with no interest. Lenders have
 10 touted BNPL as a safer alternative to credit card debt, along with its ability
 11 to serve consumers with scant or subprime credit histories.

12 * * *

13 The law requires that the CFPB monitor consumer financial markets and
 14 enables the agency to require market players to submit information to
 15 inform this monitoring. The CFPB expects to publish aggregated findings
 16 on insights learned from this inquiry. Today’s orders seek to illuminate the
 17 range of these consumer credit products and their underlying business
 18 practices. Specifically, the Bureau is concerned about:

- 19 • **Accumulating debt:** Whereas the old-style layaway installment
 20 loans were typically used for the occasional big purchase, people can
 21 quickly become regular users of BNPL for everyday discretionary
 22 buying, especially if they download the easy-to-use apps or install
 23 the web browser plugins. If a consumer has multiple purchases on
 24 multiple schedules with multiple companies, it may be hard to keep
 25 track of when payments are scheduled. And when there is not
 26 enough money in a consumer’s bank account, this can potentially
 27 result in charges by both the consumer’s bank and the BNPL
 28 provider. Because of the ease of getting these loans, consumers can
 end up spending more than anticipated.
- **Regulatory arbitrage:** Some BNPL companies may not be
 adequately evaluating what consumer protection laws apply to their
 products. For example, some BNPL products do not provide certain
 disclosures, which could be required by some laws. And while the
 BNPL application may look similar to a standard checkout with a
 credit card, protections that apply to credit cards may not apply to
 BNPL products. Many BNPL companies do not provide dispute
 resolution protections available to users of other forms of credit, like

credit cards. And finally, depending on what rules the lender is following, different late fees and policies apply.

- **Data harvesting:** BNPL lenders have access to the valuable payment histories of their customers. Some have used this collected data to create closed loop shopping apps with partner merchants, pushing specific brands and products, often geared toward younger audiences. As competitive forces pressure the merchant discount, lenders will need to find other sources of revenue to maintain growth and profitability. The Bureau would like to better understand practices around data collection, behavioral targeting, data monetization and the risks they may create for consumers.

The BNPL product has seen growth internationally and many other countries are also taking a close examination of its providers. As part of today's inquiry, the Bureau is working with its international partners in Australia, Sweden, Germany and the UK, specifically the Financial Conduct Authority. The Bureau will also be coordinating with the rest of the Federal Reserve System, as well as its state partners. [Emphasis in original].

54. On this news, the Company's stock price fell \$11.74 per share, or 10.58%, to close at \$99.24 per share on December 16, 2021. Despite this decline in the Company's stock price, the Company's securities continued to trade at artificially inflated prices as a result of the Company's misrepresentations concerning the strength and accuracy of its financial reporting controls.

55. For instance, the Company planned to announce its financial results for the second quarter of fiscal year 2022 after the markets closed on February 10, 2022. That day, at approximately 1:15 p.m., however, the Company's official Twitter account issued a tweet containing some of the Company's second quarter 2022 financial results (the "2Q22 Tweet"). That tweet stated: "Another great quarter in the books [] as we accelerated our growth. Leveraging our superior technology & putting people first = increasing total # of transactions by 218%, active consumers by 150%, GMV by 115%, & revenue by 77%! Tune in today at 2pm PT[.]"

56. The 2Q22 Tweet, which made it appear that the Company had a highly

1 successful quarter, caused the Company's share price to jump roughly 10% in intra-day
2 trading.

3 57. The statements referenced in ¶ 55 were materially false and misleading
4 because Defendants made false and/or misleading statements, as well as failed to
5 disclose material adverse facts about the Company's business, operations, and
6 compliance policies. Defendants made and/or misleading statements and/or failed to
7 disclose that: (i) the Company maintained inadequate disclosure controls and procedures
8 and internal control over financial reporting; (ii) accordingly, the 2Q22 Tweet for the
9 Company's second quarter 2022 financial results contained selected metrics that made it
10 appear that the Company had performed better than it actually did; and (iii) as a result,
11 the Company's public statements were materially false and misleading at all relevant
12 times.

13 **THE TRUTH FULLY EMERGES**

14 58. On February 10, 2022, the Company deleted the 2Q22 Tweet and released
15 its full second quarter 2022 financial results ahead of schedule. The full financial results
16 were far less impressive than investors were led to believe from the 2Q22 Tweet. For
17 instance, the Company posted a quarterly loss of \$0.57 per share—far worse than analyst
18 expectations of \$0.37 per share.

19 59. The Company's 2Q22 Tweet was materially false and misleading because it
20 contained only selected metrics from the Company's second quarter 2022 financial
21 results, which caused investors to believe that the Company had performed better than it
22 actually did. The 2Q22 Tweet omitted material details, including that the Company's
23 quarterly loss was \$0.57 per share, which was necessary in order to make the statement
24 made not misleading.

25 60. It was severely reckless for Defendants to allow the misleading tweet to be
26 sent during the market day.

27 61. On news of the deleted 2Q22 Tweet and subsequent release of the full
28 earnings, the Company's share price plummeted \$24.89 per share from an intra-day high

1 of \$83.57 per share to close at \$58.68 per share on February 10, 2022, or approximately
2 32%.

3 62. On January 12, 2022, the CFPB reported:

4 Several weeks ago, we issued a market-monitoring inquiry into “buy now,
5 pay later” (BNPL) products and business practices. Now we are inviting
6 anyone interested in this market to submit comments -- including families,
7 small businesses, and international regulators.

8 Use of BNPL has seen astronomical growth. Companies like Affirm,
9 Afterpay, Klarna, PayPal, and Zip (formerly Quadpay) have become
10 almost ubiquitous in the retail market since the pandemic. This past holiday
11 season, usage spiked even higher, especially among young people. Some
12 analysts have suggested that BNPL has rerouted big holiday shopping
13 money away from the credit card companies towards these companies,
14 putting an enormous amount of consumer debt on their books.

15 People encounter BNPL credit at the point of sale either online or at
16 traditional retail stores. The loans are presented as a type of deferred
17 payment option that generally allows someone to split a purchase into
18 smaller installment payments, often with a down payment of 25 percent.
19 The application process is quick, involving relatively little information
20 from the buyer, and the buyer usually pays no interest.

21 For the buyer, it may seem like they are getting something for nothing. And
22 it can be appealing because not only is it convenient but instead of an
23 upfront cost of \$100, they pay \$25. But we are concerned there may be
24 some systemic, underlying problems, particularly around accumulating
25 debt, regulatory arbitrage, and data harvesting in a consumer credit market
26 already quickly changing with technology. For some people, BNPL could
27 look like a standard payment method when they are really taking on a new
28 form of debt.

While BNPL has caught the eye of many investors, including big tech
companies and significant venture capitalists, it has also caught the eye of
fellow regulators around the world, including ones in Ireland, Germany,
and the EU. Sweden already has a BNPL law that requires merchants to
first present consumer options that do not contribute to debt. Last year, Her
Majesty’s Treasury in the United Kingdom signaled plans for greater
regulation. And in late October, the Reserve Bank of Australia said that

1 BNPL firms will no longer be able to bar merchants from passing on
2 surcharges for their services.

3 In the U.S., Congress has tasked us with ensuring that markets for
4 consumer financial products and services are fair, transparent, and
5 competitive. To that end, it has authorized us to require participants in the
6 marketplace to provide information that helps us monitor risks to
7 consumers and to publish aggregated findings that are in the public interest.
8 The orders issued on December 16 required five different buy now, pay
later lenders to provide information on the risks and benefits of their
products.

9 **DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

10 63. Plaintiff brings this action derivatively in the right and for the benefit of the
11 Company to redress injuries suffered and to be suffered as a direct and proximate result
12 of the breaches of fiduciary duties and gross mismanagement by the Individual
13 Defendants.

14 64. Plaintiff will adequately and fairly represent the interests of the Company
15 and its shareholders in enforcing and prosecuting its rights and has retained counsel
16 competent and experienced in derivative litigation.

17 65. Plaintiff is a current owner of the Company stock and has continuously
18 been an owner of Company stock during all times relevant to the Individual Defendants'
19 wrongful course of conduct alleged herein. Plaintiff understands his obligation to hold
20 stock throughout the duration of this action and is prepared to do so.

21 66. During the illegal and wrongful course of conduct at the Company and
22 through the present, the Board consisted of the Director Defendants. Because of the
23 facts set forth throughout this Complaint, demand on the Company Board to institute
24 this action is not necessary because such a demand would have been a futile and useless
25 act.

26 67. The Company Board is currently comprised of Defendants Levchin, Liew,
27 Michalek, Ming, Quarles, Rabois, Reses and White. Thus, Plaintiff is required to show
28 that a majority of the Demand Defendants, *i.e.*, four (4), cannot exercise independent

1 objective judgment about whether to bring this action or whether to vigorously prosecute
2 this action.

3 68. The Individual Defendants face a substantial likelihood of liability in this
4 action because they caused the Company to issue false and misleading statements
5 concerning its financial results and future prospects. Because of their advisory,
6 executive, managerial, and directorial positions with the Company, the Individual
7 Defendants had knowledge of material non-public information regarding the Company
8 and was directly involved in the operations of the Company at the highest levels.

9 69. The Individual Defendants either knew or should have known of the false
10 and misleading statements that were issued on the Company's behalf and took no steps
11 in a good faith effort to prevent or remedy that situation.

12 70. The Individual Defendants (or at the very least a majority of them) cannot
13 exercise independent objective judgment about whether to bring this action or whether
14 to vigorously prosecute this action. For the reasons that follow, and for reasons detailed
15 elsewhere in this Complaint, Plaintiff has not made (and should be excused from
16 making) a pre-filing demand on the Board to initiate this action because making a
17 demand would be a futile and useless act.

18 71. The Individual Defendants approved and/or permitted the wrongs alleged
19 herein to have occurred and participated in efforts to conceal or disguise those wrongs
20 from the Company's stockholders or recklessly and/or with gross negligence disregarded
21 the wrongs complained of herein and are therefore not disinterested parties.

22 72. The Individual Defendants authorized and/or permitted the false statements
23 to be disseminated directly to the public and made available and distributed to
24 shareholders, authorized and/or permitted the issuance of various false and misleading
25 statements, and are principal beneficiaries of the wrongdoing alleged herein, and thus,
26 could not fairly and fully prosecute such a suit even if they instituted it.

27 73. Because of their participation in the gross dereliction of fiduciary duties,
28 and breaches of the duties of due care, good faith, and loyalty, the Individual Defendants

are unable to comply with their fiduciary duties and prosecute this action. They are in a position of irreconcilable conflict of interest in terms of the prosecution of this action and defending themselves in the securities fraud class action lawsuits brought under the Securities Exchange Act of 1934.

74. Additionally, each of the Individual Defendants received payments, benefits, stock options, and other emoluments by virtue of their membership on the Board and their control of the Company.

Defendant Levchin

75. Defendant Levchin has served as the Company's Chairman of the Board of Directors (the "Board") and Chief Executive Officer ("CEO") at all relevant times. The Company provides Defendant Levchin with his principal occupation for which he receives handsome compensation.

76. As CEO, Defendant Levchin was ultimately responsible for all of the false and misleading statements and omissions that were made during the Relevant Period, including the statements contained in the 2021 Form 10-K, which he personally signed.

77. Further, Defendant Levchin is a defendant in the Securities Class Action. For these reasons, Defendant Levchin breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

Defendant Michalek

78. Defendant Michalek has served as a member of the Company's Board since May 2021. Defendant Michalek has served as the Company's President, Technology, Risk and Operations since May 2021 and previously served as the Company's President, Technology from 2018 to May 2021. Defendant Michalek served as the Company's Chief Technology Officer from 2015 to 2018. The Company provides Defendant Michalek with his principal occupation for which he receives handsome compensation.

79. For these reasons, Defendant Michalek is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

Defendants Ming, Quarles, Rabois and Reses

80. Defendants Ming, Quarles, Rabois and Reses served as members of the Audit Committee during the Relevant Period, with Defendant Quarles serving as chair. Pursuant to the Company's Audit Committee Charter, these Defendants are responsible for overseeing the Company's quality and integrity of the Company's financial statements, the Company's compliance with legal and regulatory requirements, the Company's financial reporting process, and the Company's internal controls over financial reporting. These Defendants failed to ensure the quality and integrity of the Company's financial statements, as they are charged to do under the Audit Committee Charter, allowing the Company to make and file false and misleading financial statements with the SEC and to fail to maintain internal controls. The Defendants breached their fiduciary duties, are not disinterested, and demand is excused as to them.

Defendant Levchin and Liew -- Investors' Rights Agreement

81. *Defendant Levchin*, entities affiliated with Lightspeed Venture Partners (*Defendant Liew* is partner at Lightspeed Venture Partners), entities affiliated with Spark Capital, entities affiliated with Thrive Capital, entities affiliated with Jasmine Ventures other holders of the Company's redeemable convertible preferred stock, and Shopify, are party to an amended and restated investors' rights agreement, dated as of September 11, 2020 (the "Investors' Rights Agreement"), pursuant to which the Company granted such holders certain registration rights with respect to the registrable securities held by them.

82. Both Levchin and Liew have business relationships with each other that preclude them from acting independently and in the best interests of the Company and the shareholders.

FIRST CAUSE OF ACTION

(Against The Individual Defendants for Breach of Fiduciary Duties)

83. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

84. The Individual Defendants owe the Company fiduciary obligations. By reason of their fiduciary relationships, the Individual Defendants owed and owe the Company the highest obligation of good faith, fair dealing, loyalty, and due care.

85. The Individual Defendants violated and breached their fiduciary duties of care, loyalty, reasonable inquiry, and good faith.

86. The Individual Defendants engaged in a sustained and systematic failure to properly exercise their fiduciary duties. Among other things, the Individual Defendants breached their fiduciary duties of loyalty and good faith by allowing the Company to improperly misrepresent the Company's publicly reported financials. These actions could not have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

87. As a direct and proximate result of the Individual Defendants' failure to perform their fiduciary obligations, the Company has sustained significant damages. As a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

88. As a direct and proximate result of the Individual Defendants' breach of their fiduciary duties, the Company has suffered damage, not only monetarily, but also to its corporate image and goodwill. Such damage includes, among other things, costs associated with defending securities lawsuits, severe damage to the share price of the Company, resulting in an increased cost of capital, the waste of corporate assets, and reputational harm.

SECOND CAUSE OF ACTION

(Against The Individual Defendants for Gross Mismanagement)

89. Plaintiff incorporates by reference and re-alleges each allegation contained above, as though fully set forth herein.

90. By their actions alleged herein, the Individual Defendants, either directly or through aiding and abetting, abandoned and abdicated their responsibilities and fiduciary duties with regard to prudently managing the assets and business of the Company in a

1 manner consistent with the operations of a publicly held corporation.

2 91. As a direct and proximate result of the Individual Defendants' gross
3 mismanagement and breaches of duty alleged herein, the Company has sustained
4 significant damages in excess of millions of dollars.

5 92. Because of the misconduct and breaches of duty alleged herein, the
6 Individual Defendants are liable to the Company.

7 **THIRD CAUSE OF ACTION**

8 **(Against The Individual Defendants for Abuse of Control)**

9 93. Plaintiff incorporates by reference and re-alleges each and every allegation
10 set forth above, as though fully set forth herein.

11 94. The Individual Defendants' misconduct alleged herein constituted an abuse
12 of their ability to control and influence the Company, for which they are legally
13 responsible.

14 95. As a direct and proximate result of the Individual Defendants' abuse of
15 control, the Company has sustained significant damages. As a direct and proximate
16 result of the Individual Defendants' breaches of their fiduciary obligations of candor,
17 good faith, and loyalty, the Company has sustained and continues to sustain significant
18 damages. As a result of the misconduct alleged herein, the Individual Defendants are
19 liable to the Company.

20 96. The acts and omissions of the Individual Defendants complained of in this
21 Count have been undertaken willfully, knowingly, and maliciously, and/or with reckless
22 disregard for their respective civil obligations, and accordingly the Company is entitled
23 to recover punitive damages with respect to this Count.

24 **FOURTH CAUSE OF ACTION**

25 **(Against The Individual Defendants For Unjust Enrichment)**

26 97. Plaintiff incorporates by reference and re-alleges each and every allegation
27 set forth above, as though fully set forth herein.

28 98. During the Relevant Period, the Individual Defendants received bonuses,

1 stock options, and/or similar such compensation from the Company that were tied to the
 2 financial performance of the Company. The Individual Defendants were unjustly
 3 enriched thereby.

4 99. To remedy the Individual Defendants' unjust enrichment, this Court should
 5 order them to disgorge their unjustly obtained bonuses and compensation.

6 100. The acts and omissions of the Individual Defendants complained of in this
 7 Count have been undertaken willfully, knowingly, and maliciously, and/or with reckless
 8 disregard for their respective civil obligations, and accordingly the Company is entitled
 9 to recover punitive damages with respect to this Count.

10 **FIFTH CAUSE OF ACTION**

11 **(Against Defendants Levchin and Lindford for Contribution** 12 **Under Sections 10(b) and 21D of the Exchange Act)**

13 101. Plaintiff incorporates by reference and realleges each and every allegation
 14 set forth above, as though fully set forth herein.

15 102. Affirm and Defendants Levchin and Lindford are named as defendants in
 16 the Securities Class Action, which asserts claims under the federal securities laws for
 17 violations of Sections 10(b) and 20(a) of the Exchange Act, and SEC Rule 10b-5
 18 promulgated thereunder. If and when the Company is found liable in the Securities
 19 Class Action for these violations of the federal securities laws, the Company's liability
 20 will be in whole or in part due to Defendant Levchin and Lindford's willful and/or
 21 reckless violations of their obligations as officers of Affirm

22 103. Defendants Levchin and Lindford, because of their positions of control and
 23 authority as CEO and CFO, respectively, were able to and did, directly and/or indirectly,
 24 exercise control over the business and corporate affairs of the Company, including the
 25 wrongful acts complained of herein and in the Securities Class Action.

26 104. Accordingly, Defendants Levchin and Lindford are liable under 15 U.S.C. §
 27 78j(b), which creates a private right of action for contribution, and Section 21D of the
 28 Exchange Act, 15 U.S.C. § 78u-4(f), which governs the application of a private right of

1 action for contribution arising out of violations of the Exchange Act.

2 105. As such, the Company is entitled to receive all appropriate contribution or
3 indemnification from Defendants Levchin and Lindford.

4 **REQUEST FOR RELIEF**

5 **WHEREFORE**, Plaintiff demands judgment as follows:

6 A. Determining that this action is a proper derivative action
7 maintainable under law, and that demand is excused;

8 B. Awarding, against all the Individual Defendants and in favor of the
9 Company, the damages sustained by the Company as a result of the Individual
10 Defendants' breaches of their fiduciary duties;

11 C. Directing the Company to take all necessary actions to reform and
12 improve its corporate governance and internal procedures, to comply with the
13 Company's existing governance obligations and all applicable laws and to protect
14 the Company and its investors from a recurrence of the damaging events
15 described herein;

16 D. Awarding to Plaintiff the costs and disbursements of the action,
17 including reasonable attorneys' fees, accountants' and experts' fees, costs, and
18 expenses; and

19 E. Granting such other and further relief as the Court deems just and
20 proper.

21 **JURY DEMAND**

22 Plaintiff demands a trial by jury on all issues so triable.
23
24
25
26
27
28

1 Dated: April 25, 2022

2 **MAGNANIMO DEAN LAW, APC**

3 By: 

4 Lauren A. Dean, Esq. (SBN 174722)

5 5850 Canoga Avenue, Suite 400

6 Woodland Hills, CA 91367

7 Tel: (818) 305-3450

8 Email: lauren@magdeanlaw.com

9 Thomas J. McKenna

10 Gregory M. Egleston

11 **GAINEY McKENNA & EGESTON**

12 501 Fifth Avenue, 19th Floor

13 New York, NY 10017

14 Phone: (212) 983-1300

15 Fax: (212) 983-0383

16 Email: tjmckenna@gme-law.com

17 Email: gegleston@gme-aw.com

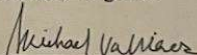
18 *Counsel for Plaintiff*

VERIFICATION

I, MICHAEL VALLIERES, declare that I have reviewed the Verified Shareholder Derivative Complaint ("Complaint") prepared on behalf of Affirm Holdings, Inc. and authorize its filing. I have reviewed the allegations made in the Complaint, and to those allegations of which I have personal knowledge, I believe those allegations to be true. As to those allegations of which I do not have personal knowledge, I rely on my counsel and their investigation and for that reason believe them to be true. I further declare that I am a current holder, and have been a holder, of Affirm Holdings, Inc. common stock at all relevant times.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on April 20, 2022, at Virginia Beach, Virginia.


MICHAEL VALLIERES